DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
941 North Capitol Street, NE, Suite 9100
Washington, DC 20002

S. L. Appellant/Claimant, v. A.S.&L.S., INC. Appellee/Employer, And DEPARTMENT OF EMPLOYMENT SERVICES Appellee/Agency.	Case No.: ES-P-07-107171

FINAL ORDER

I. INTRODUCTION

On April 27, 2007, Claimant filed an appeal of a Claims Examiner's Determination that was certified as served April 3, 2007, holding him ineligible for benefits. At issue is whether the request for an appeal was filed within the ten-day statutory time limit, providing this administrative court with subject matter jurisdiction. District of Columbia Unemployment Compensation Act, D.C. Code, 2001 Ed. § 51-111(b).

This administrative court issued a Scheduling Order and Notice of In-Person Hearing on May 8, 2007, scheduling the hearing for May 22, 2007, at 11:30 a.m. Claimant represented himself. The Department of Employment Services ("DOES") was represented by Dorothy Jones. However, it came to my attention that Employer ("ACS"), an interested party, had not

been served with the May 8, 2007, Scheduling Order. Thus, in order to provide ACS an opportunity to participate in the hearing, the May 22, 2007, hearing was postponed and a new Scheduling Order was issued on May 24, 2007, setting the hearing for June 7, 2007 at 12:30 p.m. The May 24, 2007, Scheduling Order was sent to all parties, including ACS. On June 7, 2007, Claimant represented himself and testified at the hearing. M.M. represented DOES and testified at the hearing. ACS did not send a representative to the hearing.[1] During the hearing, Court records were admitted into evidence as exhibits 300.1, 300.2, and 301, in order to determine jurisdiction.

II. FINDINGS OF FACT

On April 3, 2007, the Claims Examiner issued two separate Determinations. Exhibits 300.1 and 300.2. These Determinations were mailed in separate envelopes. Claimant did not receive the "Notice of Appeal Rights" forms that DOES routinely sends with Claims Examiner's Determinations. In order to ascertain his appeal rights, Claimant telephoned the Claims Examiner, on or about April 4, 2006, and left a message asking for this information. The Claims Examiner did not reply to Claimant's message. After a number of days, Claimant then sent his Claims Examiner an email asking the same question. The Claims Examiner did not respond to the email. On approximately April 20, 2007, Claimant called DOES again and was transferred to the "Appeals Section." The DOES representative with whom he spoke to agreed to mail him a copy of the "Notice of Appeal Rights." Claimant received this Notice on or about April 25, 2007, and filed his appeal document on April 27, 2007. Exhibit 301. The address to which

[1] The hearing began at 12:52 p.m. This administrative court mailed the Scheduling Order and Notice of In-Person Hearing to Employer at the address provided by DOES. The May 24, 2007, Scheduling Order was not returned by the United States Postal Service. Employer did not request a postponement of the hearing. No other address for Employer is available in the records of this administrative court.

Claimant's copies of the Determinations were sent was his current and last-known address: 9420 Tobin Circle, Potomac, MD 20854. Exhibits 300.1 and 300.2.

III. DISCUSSION AND CONCLUSIONS OF LAW

In accordance with D.C. Code, 2001 Ed. § 51-111(b), any party may file an appeal from a Claims Examiner's Determination within ten calendar days after the mailing of the determination to the party's last-known address or, in the absence of such mailing, within ten calendar days of actual delivery of the determination. The Determination in this case is certified as having been served on April 3, 2007. Therefore, Claimant had until April 13, 2007, to file an appeal request. Claimant filed his appeal document on April 27, 2007. The appeal was filed untimely and jurisdiction is not established. D.C. Code, 2001 Ed. § 51-111(b).

The issue of subject matter jurisdiction is a serious one, reflecting the legislature's determination as to what the outer bounds of this administrative court's authority is to hear and decide cases. This administrative court must adhere to these limits and is without authority to waive them. *Gosch v. D.C. Dep't of Employment Servs.*, 484 A.2d 956, 957 (D.C. 1984) (holding no jurisdiction to consider an appeal where the time prescribed for filing has expired and noting that the Supreme Court has approved even shorter time limits in the face of due process challenges). Based on the record presented, Claimant's request for hearing was not filed with this administrative court within ten days of service of the Claims Examiner's Determination. D.C. Code, 2001 Ed. § 51-111(b); *Gosch,* 484 A.2d at 957.

This administrative court does not have jurisdiction. The District of Columbia Court of Appeals has long held that, if proper notice of the determination has been provided, the "ten day period for … appeals under the Unemployment Compensation Act … is jurisdictional, and

failure to file within the period prescribed divests [an administrative tribunal] of jurisdiction to hear the appeal." *Lundahl v. D.C. Dep't of Employment Servs.,* 596 A.2d 1001 (D.C. 1991) (internal citations omitted); *Gaskins v. D.C. Unemployment Comp. Bd.,* 315 A.2d 567 (D.C. 1974) (no jurisdiction to consider an untimely appeal even where notice of claims determination was received by appellant in aftermath of death in family).

In this jurisdiction, the law presumes that a certificate of service constitutes evidence of the mailing date and address, unless the certification is rebutted by reliable evidence. *D.C. Pub. Employee Relations Bd. v. D.C. Metro. Police Dep't*, 593 A.2d 641, 643 (D.C. 1991), *citing Thomas v. D.C. Dep't of Employment Servs.*, 490 A.2d 1162, 1164 (D.C. 1985). The District of Columbia Court of Appeals has found it to be a "rebuttable presumption that mail which has been correctly addressed, stamped and mailed has been received by the addressee." *Brown v. Kone, Inc.*, 841 A.2d 331, 334 (D.C. 2004) (internal cites omitted).

The presumption of mailing to the address of record on April 3, 2007, was not rebutted in this case, as Claimant acknowledged that the address on the Determination was at the time of mailing, and still is, his current and last known address. Claimant also testified that he received the Determinations. Claimant credibly testified that the Determinations did not contain the Notice of Appeal Rights forms. Claimant also credibly testified that he tried two times, without success, to reach his Claims Examiner in the hope that the Claims Examiner would explain his appeal rights/obligations. Further, when Claimant finally received a copy of the Notice of Appeal Rights, he filed his appeal with two calendar days. However, even though I credit all of Claimant's testimony, this evidence is insufficient to overcome the jurisdictional bar to hearing his case.

Claimant finds himself, essentially, in the same position as a claimant who never received the Claims Examiner's Determination. In those instances, even when the claimant has presented credible, uncontroverted testimony that he/she did not receive the Determination, the ten-day filing requirement still presents a jurisdictional bar to the case going forward. D.C. Code, 2001 Ed. § 51-111(b). If this Claimant had not received the Determinations, given the facts of this case, I would have to dismiss his appeal as untimely. For purposes of assessing jurisdiction, I am unable to find a legally cognizable difference between a claimant who received no Determination and one who received the Determination, but no notice of appeal rights. In both instances, DOES has not provided the claimant with sufficient information to perfect their appeal; therefore, it appears to me, the conclusion regarding jurisdiction has to be the same – dismissal.

There are a number of older District of Columbia Court of Appeals cases that find that local law requires that claimants be provided individual notice of their appeal rights. *See e.g., Gosch*, 484 A.2d 956 (D.C. 1984); and *Carroll v. District of Columbia Dep't of Employment Services***,** 487 A.2d 622 (D.C. 1985).[2] However, after a careful review of the current statutory requirements, I have found no language that supports such a conclusion. While there are requirements that DOES give claimants notice of the decision rendered, and that claimants be given a "reasonable opportunity for fair hearing[,]. . ." there is no statutory requirement that DOES give claimants individual notice of their appeal rights. D.C. Code § 51-111(e).

[2] A good example of this interpretation of local law is found in *Gosch*, 484 A.2d 956. Here the Court of Appeals declared:

> [T]he Department fully complied with all relevant statutory provisions, particularly D.C. Code § 46-112(b), and in doing so gave her reasonable notice of the decision of the claims deputy, her right to appeal from that decision and the time within which she must do so.

Gosch, 484 A.2d 956, 957 (emphasis added).

If the District of Columbia Court of Appeals had concluded that a claimant's right to notice of his/her appeal rights was based on constitutional principles, then requirements of local law (or lack thereof) would not preclude Claimant's case from moving forward. However, the Court of Appeals has not so found; rather, the decisions are predicated on local statutory law. Thus, as noted above, Claimant's failure to file timely prevents this administrative court from hearing his case.

Additionally, District of Columbia law requires only that the Determination be mailed to the last-known address. There is no requirement that it actually be received. D.C. Code, 2001 Ed. § 51-111(b). Claimant may feel that this ruling visits a harsh result; however, "[t]he Constitution [. . .] does *not* require with regard to notice that 'the state . . . erect an ideal system for the administration of justice which is impervious to malfunctions.'" *Carroll***,** 487 A.2d at 623.

I cannot waive appellate jurisdictional requirements. *Customers Parking, Inc. v. District of Columbia,* 562 A.2d 651, 654 (D.C. 1989), s*ee also Bowles v. Russell*, 127 S.Ct. 2360 (2007). These jurisdictional requirements vindicate important legislative policies in preventing staleness and promoting repose where a matter has already been heard and decided by a lower tribunal. Since "in order to act [this][tribunal] must have jurisdiction[,]" *Slater v. Biehl,* 793 A.2d 1268, 1271 (D.C. 2002), and it does not, this appeal must be dismissed. D.C. Code, 2001 Ed. § 51-111(b). Therefore, the Claims Examiner's Determinations, dated April 3, 2007, remain unchanged.

IV. ORDER

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, it is, this 5th day of July 2007

ORDERED that Appellant/Claimant's Request for Hearing to review the Claims Examiner's April 3, 2007, Determinations are hereby **DISMISSED** for lack of jurisdiction; it is further

ORDERED that the appeal rights of any person aggrieved by this Order are stated below.

July 5, 2007

/S/
Jesse P. Goode
Administrative Law Judge